

Atty. Dkt. No. 088734-1111
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Bruno DE LIGNIERES

Title: TREATMENT OF MASTALGIA WITH 4-HYDROXY TAMOXIFEN

Appl. No.: 10/734,640

Filing Date: 12/15/2003

Examiner: U. Ramachandran

Art Unit: 1627

Confirmation 9061

Number:

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant respectfully requests reconsideration of the Patent Term Adjustment (PTA) determined for the application.

The Patent Office determined that the patent was entitled to 381 days of PTA. Applicant believes that this PTA determination was made in accordance with the "Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)" published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

07/27/2010 CKHLOK 00000006 190741 10734640
01 FC:1455 200.00 DA

In *Wyeth v. Kappos*, No. 2009-1120 (Jan. 7, 2010), the Federal Circuit determined that "[b]efore the three-year mark, no 'overlap' can transpire between the A delay and the B delay," and that "[i]f an A delay occurs on one day and a B delay occurs on a different day, those two days do **not** 'overlap' under section 154 (b)(2)" (emphasis added).

Applicant has recalculated PTA for the captioned patent under the court's interpretation of the PTA statute (now adopted by the Patent Office), and has determined that the application is entitled to 943 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):	1290 days
(b) Total Applicant delay:	347 days
Final PTA Determination:	943 days

Applicant therefore respectfully requests that the patent be accorded 943 days PTA.

The patent is subject to a terminal disclaimer over US Patent 7,507,769.

Atty. Dkt. No. 088734-1111

As this Request is being filed due to a Patent Office error in interpreting and applying the PTA statute, Applicant believes no fee is due with this Request. However, the Commissioner is authorized to charge any fees which may be due to Deposit Account No. 19-0741.

Respectfully submitted,

Date March 23, 2010

By Courtenay C. Brinckerhoff

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 295-4094
Facsimile: (202) 672-5399

Courtenay C. Brinckerhoff
Attorney for Applicant
Registration No. 37,288